

APPEAL NO. 010212

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 4, 2001, in (city 1), Texas, the hearing officer resolved the sole disputed issue by determining that the respondent (claimant) is entitled to supplemental income benefits for the ninth and tenth quarters. The appellant (carrier) has appealed on evidentiary sufficiency grounds. The record does not contain a response from the claimant.

DECISION

A timely appeal not having been filed with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the hearing officer have become final.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Records of the Commission reflect that the hearing officer's decision was received by the carrier's (city 2) representative on January 11, 2001. Thus, the carrier had 15 days, or until January 26, 2001 (a Friday), to mail the appeal and another five days, or until January 31, 2001 (a Wednesday), for the appeal to be received by the Commission's central office in city 2. The envelopes accompanying the carrier's appeal reflect that the carrier placed the appeal in the mail on January 26, 2000; that the appeal was returned to the carrier for additional postage; that, although the carrier added the additional postage, it forwarded the appeal by an overnight private carrier on February 1, 2000; and that the appeal was received by the Commission. Accordingly, the appeal was neither mailed by the 15th day nor received by the 20th day and it is therefore untimely.

The decision and order of the hearing officer have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge